

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

JIM COLLINS,
Plaintiff/Appellant,

v.

MARQUEZ JOHNSON, JARED BROCK,
JAMES SHELDON, RAUL ITURRALDE GONZALEZ,
ERIK LEWIS, TORBET MCNEIL, RAHUL BHADANI,
JENNIFER SEDLER, AUSTEN THOMPSON, AND
JOHN COSTANZA,
Defendants/Appellees.

No. 2 CA-CV 2019-0037
Filed September 30, 2019

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. C20175567
The Honorable Catherine Woods, Judge

AFFIRMED

Jim Collins, Tucson
In Propria Persona

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Eppich and Judge Eckerstrom concurred.

ESPINOSA, Judge:

¶1 Jim Collins appeals from the trial court’s order dismissing his civil claims against numerous named defendants for his failure to effect service of process and granting the attorney general’s motion to withdraw its appearance on behalf of ten of those defendants. He argues the order was based on the erroneous denial of his motion to extend time for service and contends it “must be reversed.” For the following reasons, we affirm.

Background

¶2 In November 2017, Collins sued twelve of his fellow graduate students at the University of Arizona for libel, slander, intentional infliction of emotional distress, abuse of process, wrongful institution of civil proceedings, civil conspiracy, and negligence. He alleged the defendants had created and distributed a defamatory email related to his position within the graduate student government. Collins thereafter moved the trial court to extend the time for service of process, and the court granted the motion, allowing an additional sixty days. Accordingly, the new deadline for serving the defendants with the summons and complaint was April 20, 2018. On April 23, 2018, Collins requested another extension of time for service, but the court denied his motion, finding “no good cause” and noting “the extended deadline to serve process expired on April 20, 2018.” Collins’s motion for reconsideration was also denied.

¶3 One defendant had been personally served on March 14, 2018 and thereafter filed an answer to the complaint. On May 4, 2018, the Arizona Attorney General’s office filed a motion to dismiss on behalf of the remaining eleven defendants for failure to state a claim and failure to serve the summons and complaint on those defendants.¹ Before filing that

¹Those defendants were Daniel Kasper, Marquez Johnson, Jared Brock, James Sheldon, Raul Iturralde Gonzalez, Erik Lewis, Torbet McNeil, Rahul Bhadani, Jennifer Sedler, Austen Thompson, and John Costanza. The

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motion, the Attorney General had secured one defendant's consent to appear on his behalf and file the motion, but had not communicated with the remaining ten defendants or obtained their consent to appear for them.

¶4 After Collins had responded to the motion to dismiss and the Attorney General had filed a reply but before the trial court had ruled on the motion, the Attorney General moved "to withdraw the appearance in this case" by all defendants named in the motion to dismiss except one, and to withdraw all motions, responses, and replies filed on their behalf, "on the grounds that their appearance in this case was not voluntary" and appearing on their behalf had been "a mistake." The trial court granted the motion. And because it found the deadline for Collins to serve the defendants had already expired at the time the Attorney General entered its unauthorized appearance for ten of the defendants, the court dismissed all claims against those defendants for lack of service. Collins appeals from that order, and we have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

Discussion

¶5 Collins contends the trial court erred by dismissing the ten defendants and granting the Attorney General's motion to withdraw, asserting the motion was "a deliberate premeditated scheme and artifice, to defraud the Court" based on "an inadmissible affidavit" from the Assistant Attorney General assigned to the case. He also argues "the basis for [the court's] decision was [its] earlier denial of [his] Motion to Extend Time for Service and Motion for Reconsideration" which were "erroneous as a matter of law." But Collins has not demonstrated that the court abused its discretion or committed any legal error.²

Attorney General's office and the university general counsel's office determined all the student-defendants were agents of the Arizona Board of Regents for actions taken in their official capacities involving student government and were therefore entitled to a defense provided by the state under A.R.S. § 41-621.

²None of the defendants has filed an answering brief, which could be construed a confession of error if debatable issues have been raised. *Nydam v. Crawford*, 181 Ariz. 101, 101 (App. 1994). However, that doctrine is discretionary, and we decline to apply it here, where the putative appellees were dismissed below and the trial court has not erred.

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¶6 Collins has cited no authority whatsoever in support of his contention that the trial court erred by granting the Attorney General's motion to withdraw. As for the denial of his second motion to extend the time of service, Collins cites Rule 4(i), Ariz. R. Civ. P., which provides that if a plaintiff shows good cause for the failure to timely serve process, the court must extend the time of service for an appropriate period. Collins argues that in denying his second request, the court failed to consider whether he had shown good cause because it only stated that the extended deadline to serve process had expired. But Collins ignores the court's explicit finding of "good cause not appearing."

¶7 To the extent Collins suggests that finding was erroneous, whether a party has shown good cause is a question of fact that is left to a trial court's sound discretion. *See Taylor v. Superior Court*, 13 Ariz. App. 52, 55 (1970). Collins has not demonstrated any abuse of discretion here, where his second request to extend time was made three days after the already-extended deadline for service had passed. *See Maher v. Urman*, 211 Ariz. 543, ¶ 18 (collecting cases finding no good cause in circumstances "arguably more compelling or sympathetic" than those presented). Collins's argument that it is "fundamentally unjust" for the court to deny his right to a decision on the merits because the statute of limitations has now run on some of his causes of actions is also unpersuasive. *See id.* ¶ 20 ("[A] trial court does not abuse its discretion in refusing to extend the time for service even when a newly filed claim would be time-barred.").³

Disposition

¶8 For the foregoing reasons, the trial court's order granting the Attorney General's motion to withdraw and dismissing all claims against defendants Johnson, Brock, Sheldon, Iturralde Gonzalez, Lewis, McNeil, Bhadani, Sedler, Thompson, and Costanza is affirmed.

³Collins requested oral argument on the motion to withdraw and contends the trial court erred when it "denied [him] a hearing on the motion to withdraw unauthorized appearance." He cites no authority in support of his claim, and his argument consists only of identifying the "misrepresentations" made by the Attorney General in the motion. Arizona's rules of civil procedure provide that a "court may decide motions without oral argument, even if oral argument is requested." Ariz. R. Civ. P. 7.1(d). Collins has shown no error.